



CITY OF ORANGE

CITY ATTORNEY

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May 17, 2017

Kevin I. Shenkman
Shenkman & Hughes
28905 Wight Road
Malibu, CA 90265

Re: *Letter to City of Orange*
Dated April 5, 2017

Dear Mr. Shenkman:

I am in receipt of your letter dated April 5, 2017, alleging that voting within the City of Orange is, “racially polarized, resulting in minority vote dilution, and therefore Orange’s at-large elections violate the California Voting Rights Act of 2001 (“CVRA”).” You appear to base this opinion on the results of two candidates in two elections, 2006 and 2010. If you had conducted research beyond the 2006 and 2010 elections you would have discovered that the City’s voters have a rich heritage of electing Latinos, as well as having the first directly elected woman to serve as a mayor in any city in Orange County.

Although you state 38% of Orange residents are Latino, you fail to point out that the voting age population number is lower at approximately 28%. The City of Orange City Council consists of five members, including a directly elected mayor. Currently two of the five members are of Latino descent, Councilmember Mike Alvarez and Mayor Teresa “Tita” Smith, that is 40% of the current City Council. By her own account Tita Smith is a 7th generation native Californian descended from Juan Jose Dominguez, who goes by “Tita”, the name given to her by her Spanish speaking relatives. Ms. Smith also speaks Spanish and is the Executive Director of Catholic Charities of Orange County, which is actively engaged in assisting the Latino community. Ms. Smith was first elected to the City Council in 2004, re-elected in 2008 and was then elected Mayor in 2012, 2014 and 2016. Mr. Alvarez was presently elected City Councilmember in 2012, and re-elected in 2016, after having previously served on the city council from 1996-2004.

As you are well aware, “Elections conducted prior to the filing of an action... are more probative to establish the existence of racially polarized voting than elections conducted after the filing of the action.” (Elections Code Section 14028(a).) Attached to this letter is a history of elections in the City dating back to 1968. The evidence shows that during the last 49 years, beginning with 1968 through the present, there has always been at least one Councilmember of Latino descent on the Orange City Council. In fact, during 21 of these past 49 years, two of the five sitting councilmembers were of Latino descent. In 1968, Jess Perez was elected to the City Council. He was re-elected in 1970 and then

elected as mayor in 1972 and again in 1974 and remained on the City Council until 1988. From 1976 to 1988, a 12-year span, the City had two Latinos on the City Council, Fred Barrera and Mr. Perez. Mr. Barrera continued to serve on the City Council until 1996. Both Mr. Perez and Mr. Barrera served on the City Council for 20 consecutive years. .

After Mr. Barrera, Mike Alvarez was elected to the City Council in 1996 and was re-elected in 2000. In 2002 the Latino makeup of the City Council was again two out of five when Steve Ambriz was elected to the City Council and joined Mr. Alvarez. Tragically, Mr. Ambriz was killed in a head-on collision in May of 2006, otherwise he likely would have run and been re-elected in November of 2006 and served through 2010. No incumbent Latino candidate has, at least since 1968, ever lost a re-election contest for the office of council member. In 2004 Tita Smith was elected to the City Council and began what will be 14 years of service when she is termed out in 2018. This maintained the two out of five representation until Mr. Ambriz' sudden passing. In 2012 Mike Alvarez was again elected to the City Council, again bringing the Latino representation to two out of five. Mr. Alvarez was re-elected in 2016 with his term expiring in 2020.

Your letter alleges that "Orange appears to have had only one Latino council member in its recent history." As has been shown this is completely inaccurate and the evidence clearly does not support a finding as required by Elections Code Section 14027 that an "...at-large method of election may not be imposed or applied in a manner that impairs the ability of a protected class to elect candidates of its choice or its ability to influence the outcome of an election..." As has been described and is evidenced by the enclosed documents, Orange has a rich history of Latino representation on its City Council. Far from being racially polarized, the City's at-large voting system appears to be one in which the Latino community has thrived.

You also provide as evidence to support your allegations that there were Latino candidates in the 2006 and 2010 elections who were unsuccessful. You allege that they each "received significant support from Latino voters" however, you provide no support for that statement. You fail to provide, or be aware of, any information as to their community involvement prior to their candidacy, or what they did during the campaign. Additionally, Tita Smith was already a sitting councilmember for each of those elections, having been elected in 2004 and re-elected in 2008.

Elections Code Section 14028 provides elements to support a finding of racially polarized voting. EC 14028(b) reads, "...In multiseat at-large election districts, where the number of candidates who are members of a protected class is fewer than the number of seats available, the relative groupwide support received by candidates from members of a protected class shall be the basis for the racial polarization analysis." In reviewing what actually occurred, in the 2006 City Council race, it appears, there was only one Latino among 11 candidates. Since two council members were elected, this means that eight non-Latino candidates also lost in that election. In that election the Latino candidate garnered 5,501 votes out of 34,534 cast or 16%. Even if one operated under the false assumption

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that the only persons who voted for the Latino candidate were Latinos, it appears that this candidate was also not overwhelming popular among Latino voters and that Latino voters in the City do not necessarily vote along racial lines anymore than non-Latinos in the City.

In the 2010 City Council election voters could select two City Council candidates and Fred Whitaker and Denis Bilodeau who were elected, each received over 14,000 votes, with the next closest candidate at 7,500 votes. Going by surname only, it appears there were two Latino candidates among the field of eight, who finished respectively, fifth and eighth. The top Latino vote getter, Yolanda Alvarez, received 6,401 votes of the 63,541 votes (10%) cast for City Council, which evidences that she did not receive a significant portion of the Latino vote, even if one operated under the false assumption that no non-Latinos voted for her. Ms. Sue Dominguez received a little over 6% of the votes cast.

There are 104 precincts in the City. In 88 of the precincts (85%), the top two vote getters were Mr. Whitaker and Mr. Bilodeau. In 103 of the precincts (99%) either Mr. Whitaker or Mr. Bilodeau was one of the top two vote getters and except for one precinct, in which Christian Vaughn and Mike Merino were the top vote getters, neither ever finished worse than third in any precinct. In eight of the precincts (7.6%), the top two vote getters were Mr. Whitaker or Mr. Bilodeau and Chris Horton. In seven precincts (7.7%), the top vote getters were Mr. Whitaker or Bilodeau and Yolanda Alvarez. In 97 of 104 precincts (93%) both Mr. Whitaker and Mr. Bilodeau received more votes than Ms. Alvarez and in 104 of 104 precincts (100%) more votes than Sue Dominguez. While I recognize that there are variable ways to look at precinct voting, at least on the surface this evidences that the voters in the City showed a remarkable pattern of voting cohesiveness across all precincts and racial lines.

In contrast, when Mike Alvarez was elected in 2012, he received 15,463 votes amongst a field of 8 candidates vying for two seats. In 2010, Ms. Yolanda Alvarez only received 6,401 votes and Sue Dominguez only received 4,105 votes. Another indication that it is the candidate not the race of the candidate that receives the votes.

Elections Code Section 14027 provides in part that an "...at-large method of election may not be imposed or applied in a manner that impairs the ability of a protected class to elect candidates of its choice or its ability to influence the outcome of an election..." The totality of the facts here in the City of Orange, supports that the Latino community has had a history of successful access to and representation in the electoral process under the current at-large system.

Sincerely,



Wayne W. Winthers
City Attorney